IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 133 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

FULCHAND J VAKHARIA

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

At the instance of the assessee in the assessment

case of the assessee for the year 1979-80, the following question of law under Section 256(1) of the Income Tax Act, 1961 has been referred to us for answer.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to carry forward and set off of loss though the said return had been filed beyond time prescribed under section 139(1) of the Income-tax Act, 1961?"

2. The only fact necessary to be mentioned are that the assessee failed to file the return in time in accordance with Section 139(1) of the Act but submitted return in accordance with sub-section 4 of Section 139 i.e. before the expiry of one year from the date of the relevant year. He submitted a return showing loss and sought to carry forward the loss of the previous year for claiming a set-off of that loss in the assessment year herein. The main question that is posed for consideration is whether the assessee having failed to file return in time under Section 139(1) of the Income Tax Act is still entitled to carry forward the loss to be set off against his income for the assessment year in question because he did file his return under sub-section 4 of Section 139.

3. The Tribunal in its order dated 22nd September, 1984, which has given rise to this reference has decided the question in favour of the assessee by relying on an unreported decision of this Court which has been reproduced in full in its order.

4. This Court under the said unreported decision made a reference to the decision of the Supreme Court in the case of C.I.T. V. Kulu Valley Transport Co.P.Ltd. (1970) 77 ITR 518 and held that since the provisions contained in Section 139 of the Income Act Act, 1961 are not materially different from corresponding provisions under the I.T.Act, 1922 (Repealed), the decision of the Supreme Court can be made applicable to permit the assessee to carry forward the loss of the previous year, on his having filed the return in accordance with sub-section 4 of Section 139.

5. Learned Counsel appearing for the Revenue very fairly point out to us that on the decision of the Supreme Court in C.I.T. Vs Kulu Valley Transport Co.P.Ltd (S.C.), majority of Courts in India including this Court had taken a view that filing of return by the

assessee, even in accordance with sub-section 4 of Section 139, should entitle him to the benefit of carrying forward the loss of the previous year. One of the judgements covering the point of Madras High Court in the case of C.I.T. Vs. P.R.Devraj decided on 24.9.1996 has been placed before us by supplying a copy of the same. There is no decision brought to our notice taking a contrary view either of any High Court or of the Supreme Court. In the aforesaid circumstances, in our view the question raised is squarely covered by the decision of this Court to which reference has been made in the order of the Tribunal by quoting its relevant part. In our opinion, the Tribunal has rightly decided the question in favour of the assessee and against the Revenue. Consequently, we answer this question in favour of the assessee and against the Revenue. The Reference is disposed of with no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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